

FROM THE KILLING FIELDS TO THE COURTHOUSE

Genocide in Bosnia and the betrayal of the ICTY.

BY AMILA JAŠAREVIĆ



Bodies of people killed in April 1993 around Vitez: Photo courtesy ICTY.

During the war in Yugoslavia in the 1990s, the United Nations decided to establish a court for prosecuting those who were at that time committing war crimes. Considering the role of the UN in that war, this seemed a bit odd.

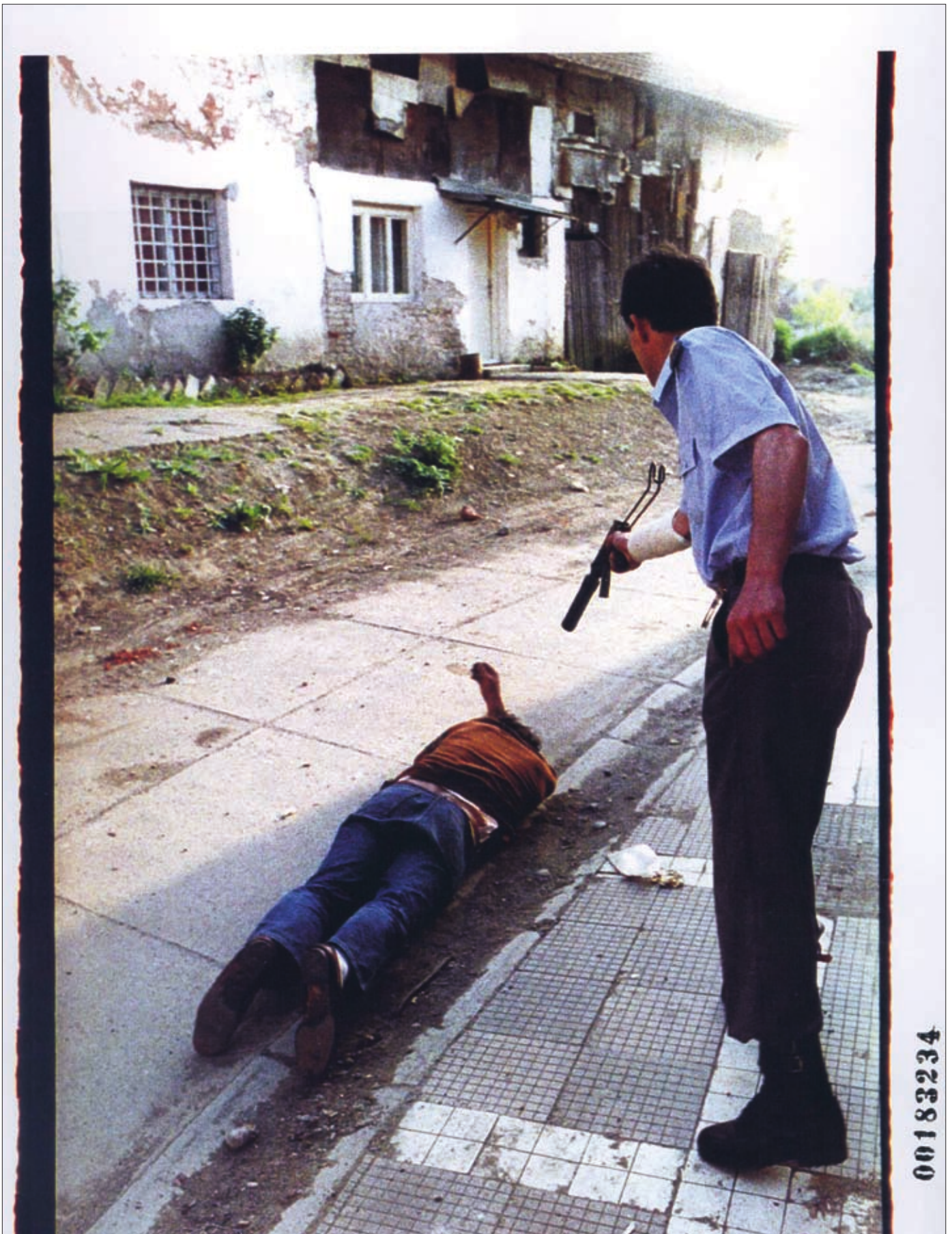
The UN had, for instance in 1991, imposed an arms embargo on the Yugoslav republics, that only prevented Bosnians from defending themselves – thus, falling victim to war crimes. The UN had also, in 1995, proclaimed the town

of Srebrenica a *safe area* and vouched for the Bosnian civilians' lives – only to hand them over to the Serb military which then committed genocide against the helpless civilian population. UN *peacekeepers* even participated in separating Bosniak boys and men from the women. In short, the UN had made many bad things worse for the civilians in Bosnia-Herzegovina.

The UN war crime tribunal was named the *International Criminal Tribunal for the former Yugoslavia*. It is in many

ways a continuation of the UN's role in the war. The ICTY has charged over 160 persons, of which more than sixty have been convicted. Currently more than forty people are in different stages of prosecution. The tribunal deals with crimes such as murder, rape, genocide, torture, enslavement, and destruction of property.

The ICTY is very distant from those it is supposed to bring justice to. The court breaks the tradition of its predecessors,



Goran Jelišić shooting a victim in Brčko: Photo courtesy ICTY.



A Kosovar refugee camp, presented as evidence in the Milošević trial: Photo courtesy ICTY.

the Nuremberg and Tokyo tribunals, by being situated very far from the countries whose wars it is supposed to deal with. The tribunal is set in The Hague, almost 1400 KM from Bosnia-Herzegovina where most of the atrocities of the war during the 1990s took place. Its international judges work in the prosperous Netherlands, far away from the daily struggle of surviving victims of war crimes, still uncovered mass graves, concentration camps and land mines.

The access that regular Bosnian citizens have to the tribunal is very limited. Survivors can appear before the ICTY only if they are chosen as witnesses. And who can travel 1400 KM to attend a hearing or protest in front of a courthouse? Televised transmissions of selected court sessions are the only way most Bosnians can ever get to see what goes on in the tribunal. Interestingly enough, the ICTY presents on its website "a groundbreaking series of events in 2004 and 2005 entitled *Bridging the Gap*." These were one-day events in five towns of Bosnia-Herzegovina, where some of the

most serious crimes took place. Five one-day events can hardly be seen as enough to bridge this gap.

But the problem is not only the very unfortunate geography of the tribunal. There is even a bigger gap between the sense of justice of the survivors and the verdicts we have seen so far from the ICTY.

One of the worst examples is the case of Dražen Erdemović, a soldier who was part of an execution squad in Srebrenica in 1995 which murdered hundreds of Bosnian Muslim civilian men between the age of seventeen and sixty. He had himself killed about a hundred people. In 1996, he was sentenced to ten years in prison. In 1998, his sentence was reduced to five years. In 1999, he was granted early release and was thus a free man, long before many of his victims had probably even been identified.

The ICTY seems to be reducing its own sentences quite often. For instance, in 2001, General Radislav Krstić of the Serb armed forces was convicted of genocide and sentenced to forty-six

years of imprisonment. This was quite sensational, as he was the first person convicted of genocide at the ICTY. Sadly, it was less noted by the press when the appeals chamber found General Krstić not guilty of genocide, and instead found him guilty of aiding and abetting the genocide, reducing his sentence to thirty-five years.

Another officer of the Serb armed forces convicted of crimes committed in Srebrenica in 1995 is Momir Nikolić, who was originally sentenced to twenty-seven years of imprisonment, but then had his sentence reduced to twenty years. He had admitted that he was involved in coordinating and organising the Bosnian Serb army operation to kill over 7000 Bosnian Muslim men and boys, and deport many thousands of women and children.

High ranking Serb politician Momčilo Krajišnik had also been sentenced to twenty-seven years of imprisonment for crimes against humanity, murder and genocide. His sentence was also reduced to twenty years, and earlier convictions of murder, extermination and persecution



UN peacekeepers collecting bodies from Ahmići, Bosnia and Herzegovina in April 1993: Photo courtesy ICTY.

dropped.

In 2003, a close colleague of Krajišnik's, Biljana Plavšić, one of the leaders of Bosnian Serbs, was sentenced to no more than eleven years for crime against humanity: persecutions on political, racial and religious grounds, which she had pleaded guilty to. Her original indictment had contained numerous other counts, including genocide, murder and extermination, but these very severe counts were dropped in a plea bargain.

The trial chamber took into account that Biljana Plavšić had "confessed to a crime of utmost gravity, involving as it did a campaign of ethnic separation which resulted in the death of thousands and the expulsion of thousands more in circumstances of great brutality," yet, it proceeded to rule a mere eleven years of imprisonment as a fit punishment for such crime.

Plavšić was transferred to Sweden to serve her time. This year she was granted early release according to Swedish law, which is after serving two-thirds of her sentence. In his decision, Judge Patrick

Robinson of the ICTY noted that Plavšić had "participated in the institution's walks and also occupied herself with cooking and baking." Thanks to such good behaviour, she was released on October 27, and is now a free woman.

The sum up: one of the highest ranking Serb politicians went to The Hague, bargained with the prosecutor to have her indictment notably shortened, pleaded guilty to a crime against humanity (a campaign of ethnic separation which resulted in the death of thousands and the expulsion of thousands more), and got off with a little more than seven years of prison.

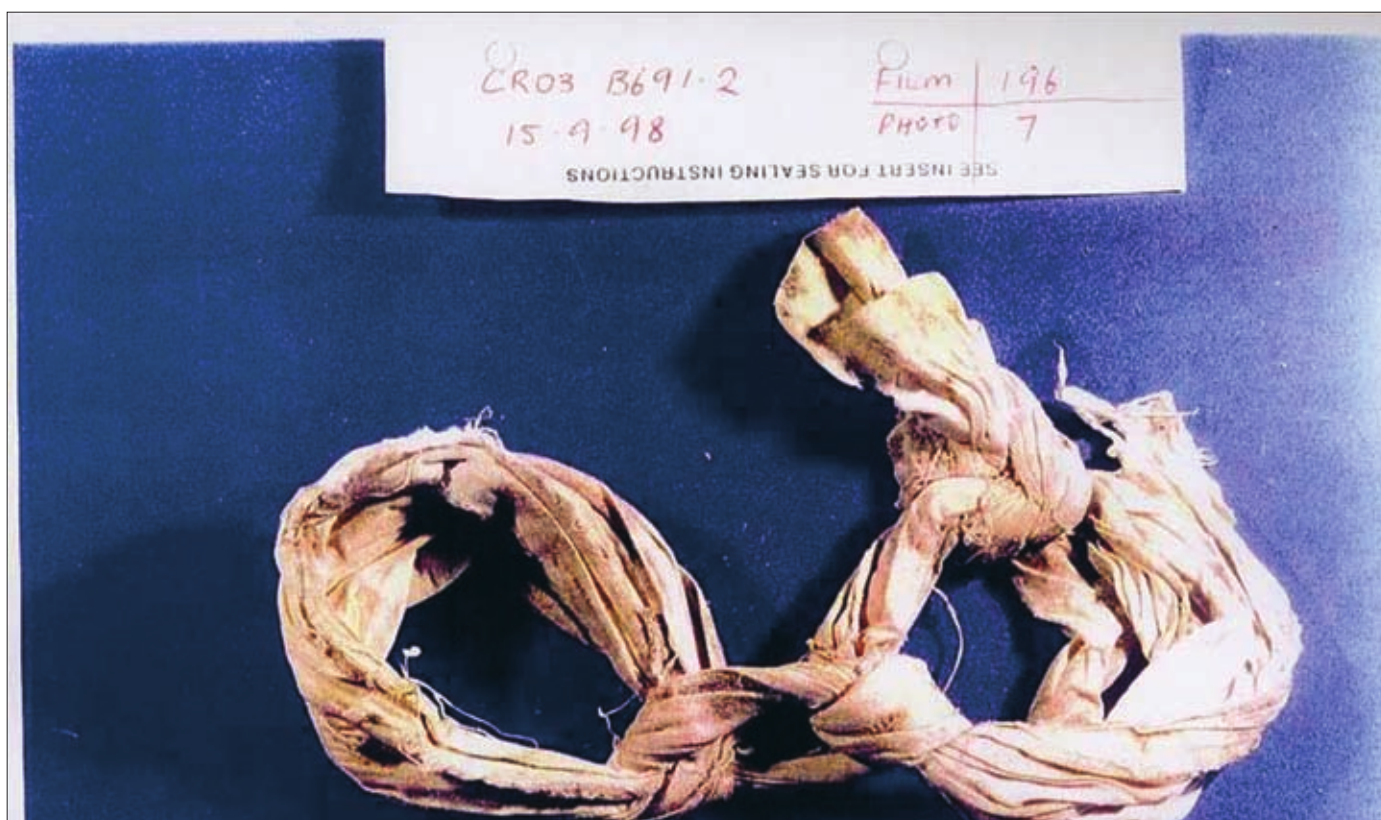
"It might be in line with international law, but it has nothing to do with justice," Murat Tahirović, head of an association of Muslim and Croat war camp prisoners, told news agency AFP.

The trial chamber mentioned Plavšić' guilty plea as a mitigating circumstance several times in its ruling. However, her display of remorse is questionable, as she later went on to write a book from her Swedish prison cell in which she describes

General Ratko Mladić, the man in charge of the killing squads that committed genocide in Srebrenica, as a *great man*. In an interview she gave to the Swedish magazine *Vi* earlier this year, Plavšić said she had "done nothing wrong," but had pleaded guilty in order to have the remaining charges against her, including those of genocide, dropped. The judges who granted her early release apparently were not aware of this.

Plavšić is not the only one whose indictment has been shortened. The ICTY is a temporary institution established in 1993 and has a *completion strategy*, according to which it is set to finish its activities by mid-2013 (latest estimates by the ICTY). Because of this deadline, some feel the need to hurry up and finish their cases – sometimes at the expense of justice by shortening the indictments.

In its recent report, *Whose Justice? The women of Bosnia and Herzegovina are still waiting*, Amnesty International expresses concern that "since the announcement of the completion strategy in 2003, in some cases, certain charges were



Ligature used to bind victims hands, unearthed during exhumation in Srebrenica: Photo courtesy ICTY.

reduced in the indictments in order to expedite the prosecution of cases. For instance, charges related to crimes of sexual violence were excluded from some indictments. Exclusion of those charges from the indictments resulted in the lack of access to justice for the survivors of these crimes and in impunity for those responsible for their perpetration.”

Meanwhile, former President of Serbia and Montenegro Slobodan Milošević was allowed to drag his case for years by insisting on representing himself and calling in countless witnesses, until finally dying in his cell, thus depriving the survivors of his war for a Greater Serbia of a verdict.

It is because of cases and verdicts like these that there is little regard for the ICTY among surviving Bosnians.

It did not help matters either when chief prosecutor Serge Brammertz, in May this year, confirmed that the tribunal had destroyed around 1000 pieces of evidence from mass graves in the Srebrenica area. Officials gave several different explanations for this – first it was because the evidence was in a bad condition, then because of public health and finally because it had *smelled bad*, as UN sources told reporter Michael Montgomery from the Center for Investigative Reporting.

These were personal items found in mass graves, items of invaluable importance both historically speaking and for the surviving family members, and they were destroyed by the very institution formed to punish the perpetrators and bring justice to the victims.

There is also the case of Florence Hartmann, former spokesperson for Carla del Ponte, former chief prosecutor at the ICTY, who wrote a book about some of the goings on at the tribunal – and was indicted of contempt. In her book, *Peace and punishment*, Hartmann argues that ICTY judges kept away key material from the public, for the sole purpose of shielding Serbia from responsibility before another UN court – the International Court of Justice, that handled the case *Bosnia-Herzegovina vs. Serbia*.

According to Hartmann, the ICJ would have not cleared Serbia of genocide at Srebrenica as it did, had it “possessed evidence that Serbia was ‘in control’ of the Republika Srpska authorities or of the Bosnia Serbian Army.” Hartmann found the actions of the judges in conflict with the very purpose of the ICTY. She was fined €7000 for contempt. What is interesting though is the fact she was never accused of lying – just of disclosing secrets of the tribunal.

The more one looks, the more reasons one finds to be less than enthusiastic about the ICTY. The verdicts alone are stunningly low. Several verdicts of the trial chamber end with a conclusion, “that no sentence which the trial chamber passes can fully reflect the horror of what occurred or the terrible impact on thousands of victims,” but most often it does not even seem to try.

Sentencing a man to a few years of imprisonment for killing about a hundred unarmed boys and men... making deals with people who organised ethnic cleansing and shortening their indictments... granting war criminals early release because they were so kind as to cook and bake in prison... destroying evidence... trying to silence those who speak up about the goings on at the tribunal...

It is, indeed, a long list. ■

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